

REMARKS

Claim Amendments

Claim 36 has been amended to correct an obvious typographical error, without narrowing the scope thereof.

Allowable Subject Matter

Applicant notes with appreciation that claims 14-21, 26, 27, and 36-40 are indicated as allowed; as such, these claims are not discussed further herein.

§103 Rejections

Claims 28, 33, 35, 41, and 42 stand rejected under §103 as being unpatentable over U.S. Patent Publication No. 2004/0117017 (Pasquet) in view of U.S. Patent No. 6,626,944 (Taylor) and U.S. Patent Publication No. 2004/0117017 (Senegas). For all rejections, Pasquet is the primary reference. Applicant requests reconsideration.

Independent claims 28 and 35 require, *inter alia*, "a strap engageable around at least two spinous processes and the wedge...the strap forming a first and a second compressive lateral element" and "first and second lateral transmission elements being adapted to press against the lateral sides of the wedge...in response to forces applied by the first and second compressive lateral elements." In rejecting independent claims 28 and 35, the Examiner alleges that Pasquet's implant 10 and fixing members 30,32 are analogous to the claimed wedge and lateral transmission elements respectively. The Examiner acknowledges that Pasquet does not disclose the use of a single strap, as required by the claim. Thus, the Examiner cites Senegas' strap 32 and alleges that it

would be obvious to use the single strap of Senegas in Pasquet's implant. However, for the reasons discussed below, Pasquet's implant 10, as modified by Senegas, would not meet each of the claimed limitations of independent claims 28 and 35.

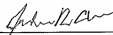
Pasquet teaches the use of a single strap 18 to press fixing member 30 (the alleged first lateral transmission element) against the implant. See, Pasquet, ¶ [0036]. Likewise, Pasquet teaches the use of a separate and distinct second strap 16 to press fixing member 32 (the alleged second lateral transmission element) against implant. See, Pasquet, ¶ [0036]-[0037]. Thus, Pasquet teaches the use of a single strap to press a single fixing member against the implant -- a one-to-one relationship. If Pasquet were modified to include only a single strap, then the single strap would only be capable of pressing one of the alleged lateral transmission elements against the implant. Thus, this modification of Pasquet would not teach each of the claim limitations. In particular, the claims clearly require that a single strap apply forces to both first and second lateral transmission elements such that both of lateral transmission elements are pressed against the wedge. For at least this reason, claims 28, 35, and their respective dependent claims define patentable subject matter over the cited art.

In addition, Pasquet explains that it is important that each strap 16, 18 is folded over on itself and pressed together to inhibit movement of the strap relative to the implant. In particular, Pasquet states that "the more the tie 18 is tensioned in the fixing member 30, the more the two portions 70 and 72 of the tie 18 are pressed together and the more effective at immobilizing the tie against movement in translation...are the friction means formed by the edges 62 or 66." See, Pasquet, ¶ [0036] and Fig. 2. This

arrangement inhibits movement of strap 18 relative to the implant and secures the implant to a spinous process. *See*, Pasquet, ¶ [0036]. Likewise, strap 16 is tensioned in the fixing member 32 to inhibit movement of strap 16 relative to the implant and to secure the implant to the other spinous process. *See*, Pasquet, ¶ [0037]. However, the Examiner has not provided any explanation suggesting how the use of a single strap can be arranged in Pasquet's implant such that two portions of the single strap are pressed together on the inner side of fixing member 30 and two portions of the single strap are pressed together on the inner side of fixing member 32 to inhibit movement of the strap relative to the implant and to secure the implant to both spinous processes. Thus, Applicant submits that the Examiner has failed to explain how the proposed modification could be made and still maintain the folded over configuration deemed important by Pasquet. For this additional reason, claims 28, 35, and their respective dependent claims define patentable subject matter over the cited art.

In view of the above remarks, the Applicant submits that the present application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,
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